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ATTORNEYS FOR HALL AND ROCHA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re)
) Chapter 11
PILGRIM'S PRIDE CORPORATION)
) Case No. 08-45664 (DML)
Debtors.)
) JOINTLY ADMINISTERED

HALL AND ROCHA'S OBJECTION TO PLAN OF REORGANIZATION

Plaintiffs Jennifer Hall and Jose Rocha ("Hall," "Rocha," and/or "Plaintiffs" collectively),¹
by undersigned counsel, file this Objection to Debtors' Amended Joint Plan of Reorganization under
Chapter 11 of the Bankruptcy Code (As Modified) filed by Pilgrim's Pride Corporation and affiliates
("PPC" or "Debtors").

¹ The Plaintiffs' case is *Hall v. Thomas*, Case No. 07-s-484, (N.D. Ala. 2007), brought under 18 U.S.C. § 1962(d), hereafter referred to as "the RICO case," "Plaintiffs' RICO case" or "their RICO case." The Defendants in that case, Phyllis Thomas and Gloria Fisher, will be collectively referred to as the "Defendants" unless otherwise noted.

I. PRELIMINARY STATEMENT ABOUT PLAINTIFFS' RICO CASE

1. On March 16, 2007, Plaintiff Jennifer Hall filed her class action complaint against two employees of the Debtors' Russellville, Alabama chicken processing plant ("Russellville Plant"), Phyllis Thomas ("Thomas"), the Plant's Complex Manager, and Paul White ("White"), the Plant's Operational Manager.² On May 2, 2008, Plaintiffs Hall and Rocha filed a Second Amended Complaint ("SAC" or "Complaint"), which added Gloria Fisher, the Russellville Plant's hourly paid HR clerk, as a Defendant. *See* Ex. A. Hall alleged that the Defendants White and Thomas conspired to hire illegal immigrants at the Russellville Plant, thereby depressing the wages of all legally authorized workers.³ Plaintiffs seek to represent a class of all such legally authorized workers.

2. On April 9, 2008, the District Court issued an Order specifically limiting discovery to the Russellville Plant and to merits issues (rather than issues related to class certification). Defendants Thomas and Fisher filed a Motion for Summary Judgment, which has been fully briefed for over a year. Pursuant to a number of orders, discovery closed on August 29, 2008. No other discovery is currently scheduled or permitted. Defendants have also filed two *Daubert* motions, challenging the Plaintiffs' expert witnesses. The District Court scheduled a hearing on those motions for earlier in November 2009. At the request of Defendants' counsel, the law firm of Baker & McKenzie, the court has vacated the hearing date in order for that firm to seek this Court's approval for payment of continued representation of the Defendants. The Court will reschedule the *Daubert* hearing, but no date is currently set.

² On July 28, 2008, the Plaintiffs voluntarily dismissed White from the case.

³ The knowing employment of ten or more illegal immigrants per year is a RICO "predicate offense." 8 U.S.C. §1324(a)(3)(A).

II. THE RELEASE AND INJUNCTION PROVISIONS OF THE PLAN OF REORGANIZATION IMPERMISSIBLY ATTEMPT TO RELEASE OR ENJOIN THE RICO CASE

3. Neither Plaintiffs Hall nor Rocha have filed claims in this case or hold equity securities of the Debtors. Hall was scheduled in Debtor's schedule F as a contingent, unliquidated and disputed litigation claim in an unknown amount. Rocha was not scheduled. It appears from the discovery in the RICO case that Debtors do not indemnify Fisher or Thomas (or any low level plant management). Moreover, at no time have Debtors or Debtors' President, Chief Executive Officer, Executive Vice President, Chief Financial Officer, Treasurer, Secretary, and/or Board Members, been named as Defendants in the RICO case.

4. Debtors' Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (As Modified) ("Plan") contains certain objectionable release and injunction provisions. Even though the Plaintiffs (and any future class action members) do not have RICO Claims against the Debtors, the Plan language can be construed to release or enjoin the pending RICO claims against Fisher and Thomas. In fact, Debtors' counsel has specifically indicated that the Plan is intended to release and/or enjoin the RICO case under sections 10.4 and 10.8 of the Plan.

5. The RICO Case is an action between non-debtors. It has no conceivable effect upon the estates of the Debtors. This Court lacks subject matter jurisdiction to confirm a Plan that releases the RICO Defendants or to enjoin the RICO Plaintiffs as part of the Plan.

6. Section 10.8 of the Plan seeks a release of all present and former employees of the Debtors. However, on its face, it does not release the Defendants in the RICO case as the RICO Plaintiffs are not holders of Claims or Equity Interests. The Debtors do not owe the RICO Plaintiffs a debt. The RICO Defendants do not share an identity with the Debtors. The release of the RICO Defendants is not necessary to the reorganization. The RICO case does not threaten the reorganization. Section 10.8 of the Plan does not apply to release the Defendants in the RICO case.

In addition, section 10.8 does not release willful or criminal conduct. The RICO Plaintiffs seek a determination by this Court that section 10.8 of the Plan does not release the RICO Defendants or any claims brought in the RICO case against the RICO Defendants.

7. Section 10.4 provides a permanent injunction as follows:

“Except as otherwise expressly provided in the Plan, all persons or entities who have held, hold or may hold Claims against or Equity Interests in the Debtors ***and all other parties in interest***, along with their respective present and former employees, agents, officers, directors, principals and affiliates, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtors, the Reorganized Debtors, their respective estates, any debtor who is indemnifiable by the Debtors or Reorganized Debtors, and their respective property, (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest, (ii) enforcing, attaching, collecting or recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order, (iii) creating, perfecting, or enforcing, in any manner, directly or indirectly, any encumbrance of any kind, (iv) asserting any right of setoff, subrogation or recoupment of any kind with respect to any such Claim or Equity Interest, or (v) pursuing any claim released pursuant to Article XII (sic) of the Plan. Such Injunction shall extend to any successors of the Debtors and the Reorganized Debtors and their respective properties and interest in properties.” (emphasis added)

The injunction purports to apply to “all other parties in interest”. The Plan does not define all other parties in interest. The Disclosure Statement makes no specific mention of the definition or identity of all other parties in interest. The RICO Plaintiffs object to this provision in the Plan. It is vague and ambiguous and violates §§524(e), 1123(a)(6), 1129(a)(1), 1129(a)(2), 1129(a)(3). The provision does not appear to be limited to holders of Claims or Equity Interests. It purports to enjoin a “party in interest” from taking the specified actions against any debtor who is indemnifiable by the Debtors or Reorganized Debtors, and their respective property. Nowhere in the Plan or the Disclosure Statement do the Debtors list “debtors... indemnifiable by Debtors or Reorganized Debtors”. The Debtors have indicated in the RICO case that Fisher and Thomas are not indemnified by the Debtors.

8. As stated, Debtors, through counsel, indicated that the Plan intended to release the RICO Defendants. The RICO Plaintiffs generally object to all releases and injunctions that purport to release the RICO Defendants as the Plaintiffs are neither Claim holders nor Equity Interest

holders. A plan release of third parties is not available over objection, particularly here where the RICO Plaintiffs are not holders of Claims or Equity Interests. *See, In re Coho Resources, Inc.*, 345 F.3d 338, 342 (5th Cir.2003); *Hall v. National Gypsum Co.*, 105 F.3d 225, 229 (5th Cir.1997); *Matter of Edgeworth*, 993 F.2d 51, 53-54 (5th Cir.1993); *Feld v. Zale Corporation*, 62 F.3d 746 (5th Cir.1995). As stated in *Bank of New York Trust Company, NA v. Official Unsecured Creditors' Committee (In the Matter of The Pacific Lumber Co.)* 584 F.3d 229, 252 (5th Cir. 2009) “these cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions”. The RICO Plaintiffs request that appropriate findings and orders be made and entered that specifically except the RICO Plaintiffs and any future class members from any releases and injunctions contained in the Plan.

WHEREFORE, Plaintiffs pray that confirmation of the Debtors' Plan be denied, and for such other relief as is proper.

Respectfully submitted,

/s/ Shawn K. Brown
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing objection was served on the Debtors' counsel, United States Trustee, counsel for the Committee of Unsecured Creditors, counsel for the Committee of Equity Security Holders of PPC by electronic service through the court's ECF system, and/or overnight delivery, as applicable, on this 30th day of November, 2009.

/s/ Shawn K. Brown